



2024 : 000 : 3136



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on : 08 April 2024**
Judgment pronounced on : 22 April 2024

+ **MAC.APP. 720/2018 and CM APPL. 31363/2018 (Stay)**

SOUMI CHAKRABORTY Appellant

Through: **Mr. Satish Tamta, Sr. Adv.**
with Ms. Nisha Narayanan, Mr.
Shariq Iqbal and Mr. Anant S.
Pandey, Advs.

versus

REKHA & ORS (M/S BHARTI AXA GENERAL
INSUARNCE CO) Respondents

Through: **None.**

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. The appellant, who is driver as well as the registered owner (*hereinafter referred as the 'appellant'*) of the Car make Hyundai i10 Magna bearing registration No. DL-3CBR-5637¹ has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988² assailing the impugned judgment-cum-award dated 03.05.2018 passed by the learned Presiding Officer, Motor Accident Claims Tribunal, Patiala House Courts, New Delhi³, whereby compensation has been awarded to the respondents No.1 to 3, who are the wife and two children of the deceased Virender Kumar (*hereinafter referred as 'claimants'*) on

¹ Offending vehicle

² M.V. Act

³ Tribunal



their claim petition under Section 166 read with Section 140 of the MV Act and at the same time although the offending vehicle was insured for third party risk, the liability to pay compensation has been fastened upon the appellant by the learned Tribunal for her Driving License⁴ found to be forged and fabricated.

2. Shorn of unnecessary details, evidently, there was collusion involving the offending vehicle and the Scooter being driven by the deceased bearing registration No. DL-7SAQ-5460. The learned Tribunal framed issued No.1 so as to ascertain culpability of the appellant, and the issue that the appellant was guilty of rash and negligent driving of the offending vehicle was decided in favour of the claimants. Further, the DL of the appellant, based on the report dated 18.12.2015 by the Licensing Authority, Agra, State of Uttar Pradesh Mark 'B', was found to be a forged and fabricated one. Therefore, while the respondent No.4/insurance company was exonerated of any financial responsibility to indemnify the insured, the appellant has been fastened with the liability to pay compensation to the claimants. Hence, the present appeal.

3. Mr. Satish Tamta, learned Senior Counsel for the appellant, has urged that the photographs placed on the record besides the site plan and the testimony of **PW-2**, would show that it was the ill-fated Scooter driven by the deceased, which rammed into the offending vehicle being driven by the appellant. It was urged that the said fact is substantiated by the damages to the right rear side body of the offending vehicle, as brought out in the mechanical inspection report

⁴ DL



2024-0106 1416



relied upon by the Police in the criminal prosecution against the appellant.

4. It was further submitted that the respondent No.4/insurance company has miserably failed to prove that the DL of the appellant was not genuine and no witness was summoned and/or examined from the Regional Transport Authority/Licensing Authority, Agra, State of Uttar Pradesh. Merely an Investigator of the insurance company viz., **R2W1** was examined. Reference has been invited to decisions in **Madhu v. Kuldeep**⁵ and **National Insurance Co. Ltd. v. Rishi Pratap Singh**⁶ in order to buttress the point that the report Mark 'B' placed on the record cannot be read into evidence.

5. None appeared for the respondents when the matter was called for final hearing.

ANALYSIS & DECISION:

6. Having heard the learned counsel for the appellant and on perusal of the record, it would be apposite to refer to the testimony of **PW-2/Mr. Ashish Kumar**, who was examined as an eye witness, which reads as follows:

**“PW 2 SH.ASHISH KUMAR S/O SH.BALWANT KUMAR,
R/O A- 463, GOKALPURI, DELHI.**

On S.A.

I am a summoned witness. I am working as Beldar in NDMC. In the month of December, I was performing duties at Firozshah Road, K.G.Marg crossing. My duty hours were from 6.00 AM to 2.00 noon. I was standing on the crossing for diversion of traffic as a huge crater had formed on the road. At about 8.00 to 9.00 PM, **I saw that a lady was coming from India Gate Side in the i10 car being driven at a high speed and deceased was**

⁵ 2013 (133) DRJ 90

⁶ MAC. APP. 198/2011 decided on 21.11.2012 (Delhi High Court)



2024 DMC 2116



coming from Firozshah road on his scooter and it was green light for the deceased and the said lady after jumping the red light had hit the scooter of deceased. After some distance the said lady stopped her vehicle and I alongwith the said lady took the injured to the Dr.RML Hospital. I had called on 100 number. Police had recorded my statement.

XXXXXXXXX DEFERRED AT THE REQUEST OF LD.COUNSEL FOR RESPONDENTS.

RO& AC

Judge/MACT/New Delhi
05.09.2016

PW 2 SH.ASHISH KUMAR, RECALLED FOR CROSS-EXAMINATION.

On S.A.

XXXXXXXXX by Sh.Satish Tamta and Ms.Nisha Narayanan, Ld.counsel for respondent no.1.

I am a permanent employee of NDMC. We are allotted the site and the list of the employees is displayed on the notice board of the NDMC office. On the date of the incident my another colleague namely Sh.Manoj Kumar was present with me at the spot. The work of the repair of the road was going on for about 15 days. The area had been barricaded by using the police barricades and NDMC also. My statement was never recorded by the police on the spot. My statement was recorded by the police on the next day of the incident. The site plan was prepared on my instructions and the same is Ex.PW2/D1. I have seen the photographs Ex.PW2/D2, D3, D4 and D5 and they are the pictures of the vehicles involved in the accident. It is wrong to suggest that at the time of accident I was standing inside the barricaded area. We were standing on the crossing to see that nobody crosses over to the barricaded area. It is wrong to suggest that I am deposing falsely. It is wrong to suggest that I had not witnessed the accident and my attention has only been drawn after hearing the noise of the impact. It is wrong to suggest that I was standing in the middle of the crossing. **The traffic lights were working at the time of incident.** XXXXXXXXXX By Sh.Mohd.Mustafa, Ld.Counsel for respondent insurance company.

It is wrong to suggest that I am not an eyewitness of the accident. It is wrong to suggest that I am having false identity card of NDMC as there is no validity of the same is mentioned. It is wrong to suggest that I am a planted and won over eyewitness.

RO& AC

Judge/MACT/New Delhi
05.09.2016"



2024-000 3436



7. In the face of such evidence on the record, learned Senior Counsel for the appellant invited attention of this Court to the site plan proven during the proceedings, which is Ex.**PW2/D1** to canvass that the offending vehicle had almost crossed the entire length and breadth of the crossing of Kasturba Gandhi Marg and Firoz Shah Road located in New Delhi and as per images/ photographs of the two vehicles besides the mechanical inspection report would show that damage to the offending vehicle was on the right-side rear body part and it was the deceased scooterist who rammed into the offending car.

8. I am afraid the aforesaid pleas are misconceived and do not help the appellant in any manner. First things first, evidently as per the mechanical inspection report, the damages were found on the right rear side of the car, headlight on the right side was found broken, side body fender was damaged and the rear side front door was also damaged and the wind screen glass was also found broken. The right-side rear door was also found to have been damaged.

9. Further, on a bare perusal of the site plan, it is apparent that the point of impact 'OA' was almost in middle of the crossing of Kasturba Gandhi Marg and Firoz Shah Road, which is not suggestive of any inference that the appellant driving the car had crossed almost half of the crossing. Be that as it may, even a bare perusal of the cross-examination of **PW-2** by the learned counsel for the appellant would show that the presence of the witness was not doubted at the site. Evidently, some digging work was going on the site and as one goes from Kasturba Gandhi Marg to Connaught Place, on the right



side just after the crossing there were barricading, and apparently no suggestion was put nor the witness was prodded that the offending vehicle had crossed almost half of the crossing. It was the categorical testimony of PW-2 that the car had jumped the red light and it was green for the scooterist. No suggestion was given to **PW-2** that it was the driver of the scooter who was driving it in a rash and negligent manner and dashed against the offending vehicle. It is in the testimony of **PW-2** that traffic lights were working at the time of accident. Incidentally, **PW-2** was an employee of NDMC, who was working at the site, where as per the learned senior counsel for the appellant road had caved in. Although the aforesaid facts were not minutely examined by the learned Tribunal and there is an apparent error on the record to the effect that in paragraph (10) of the impugned judgment-cum-award it has been wrongly observed that eye witness was not cross-examined by the counsel for the appellant. However, such flaw in the reasoning given by the learned Tribunal can be very well re-appreciated in the present appeal by this Court.

10. To sum up there are no grounds to set aside the findings on issue No.1 that it was the appellant who was responsible for causing the accident resulting in death of the deceased.

LIABILITY TO PAY COMPENSATION:

11. Indeed, no witness was summoned and examined from the Licensing Authority, Agra, State of Uttar Pradesh. However, the DL produced by the appellant for the period 05.04.2003 to 04.04.2023 was sent for verification by the insurer and there came a report Mark 'B', stating that it was issued on 05.04.2003 to one Mustafa S/o



2024-000 0116



Ahmad, Air Force Station, Agra for motorcycle/LMV Private only, valid till 24.06.2013. The said aspect was ought to be proven during the testimony of **R2W1**, an Investigator working with the Insurance Company.

12. I am afraid the case law cited at the Bar does not help the cause of the appellant. The cited case of *Madhu (supra)* was one where the driving license of the driver had been verified by the Cuttack Transport Authority to be not genuine but no witness was summoned to substantiate the same. Likewise, in the case of *Rishi Pratap Singh* referred above, the insurance company through the testimony of Investigator of the Insurance Company sought to prove that the driver of the offending vehicle was not possessing a valid driving license. It needs to be appreciated that the case law is distinguishable because the aforesaid cases could be categorised as such cases where although the driving license of the driver was found to be not genuine, the liability was not fastened upon the registered owner of the insured vehicles, for the proposition of law propounded in umpteen number of cases that the registered owners were not enjoined upon the rush to the Transport Authority/Licensing Authority for verification of the license; and there followed a presumption that they believed the driving license of their employee/driver to be genuine and tested their driving skills as well before entrusting the vehicle. It is a well settled proposition of law that the insurance company has to specifically prove that the employer/registered owner was aware or intentionally omitted to verify the driving license of his employee/driver despite finding it to be not genuine or forged.



13. Undoubtedly, the possession of a valid driving licence by the driver of the offending/insured vehicle is the fundamental requirement of law to be proven in accordance with provisions of this Act. In the instant matter, the appellant is the registered owner as well as the driver. The primary burden of proving that her DL was genuine and valid was upon her alone. The Insurance Company merely discharged its onus in summary proceedings to show that on verification, the DL was found to be not genuine and forged. After all, it was the appellant who would know as to when, where, how or in what manner she got the DL issued to her. It was incumbent upon the appellant to summon the witness from the Regional Transport Authority/Licensing Authority, Agra, State of Uttar Pradesh to substantiate that her DL was valid and subsisting so as to fasten the liability to pay compensation to the claimants and arrest any attempt by the insurer of the offending vehicle to wriggle out of its liability to indemnify her. To sum up, the appellant has miserably failed to prove that she was holding a valid DL at the time of accident.

14. Much milage was sought to be drawn by the learned counsel for the appellant that the report dated 18.12.2015 Mark 'B' from the Licensing Authority, Agra, State of Uttar Pradesh has not been proven in accordance with law. Evidently, such document is in the nature of a "public document" emanating from public record and presumption of its authenticity is invited in terms of Section 114 of the Indian Evidence Act. There is no gainsaying that the proceedings/trial before the learned Tribunal were summary in nature and at the cost of repetition in the peculiar facts and circumstances of the case, where



the appellant herself was the registered owner as well as the driver of the offending vehicle, learned Tribunal very rightly took note of the aspect of DL being forged in summary proceedings and thereby holding that the appellant was in fundamental violation of the terms and conditions of the policy of insurance.

15. In view of the foregoing discussion, the present appeal is dismissed. The appellant is directed to deposit the entire amount of compensation with accrued interest with the learned Tribunal within four weeks from today, failing which, she shall be liable to pay penal interest @ 12% from the date of filing of the petition i.e. 29.04.2016 till realization. The amount of Rs. 25,000/- towards the statutory deposit for filing of the appeal is hereby forfeited and shall also be released in favour of the respondent no.1/widow of the deceased as costs of the proceedings.

16. The present appeal along with the pending application stands disposed of.

DHARMESH SHARMA, J.

APRIL 22, 2024

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